MARIA PEREIRA ET AL. *v.* STATE
BOARD OF EDUCATION ET AL.
ROBERT WALSH ET AL. *v.* STATE
BOARD OF EDUCATION ET AL.
LAURAYNE FARRAR-JAMES ET AL. *v.* BOARD
OF EDUCATION OF THE CITY
OF BRIDGEPORT ET AL.
(SC 18833)

Rogers, C. J., and Norcott, Palmer, Zarella, McLachlan,
Eveleigh and Harper, Js.

*Argued October 27, 2011—officially released February 28, 2012**

Norman A. Pattis, with whom was *Kevin Smith*, for the appellants in the first case (named plaintiff Maria Pereira et al.).

Michele C. Mount, with whom was *John Kardaras*, for the appellants in the second case (named plaintiff Robert Walsh et al.).

Josephine Smalls Miller, with whom, on the brief, was *Atiya Sample*, for the appellants in the third case (named plaintiff Laurayne Farrar-James et al.).

Mark F. Kohler, assistant attorney general, with whom, on the brief, were *George Jepsen*, attorney general, and *Maura Murphy Osborne* and *Michael K. Skold*, assistant attorneys general, for the appellees (named defendant state board of education et al.).

John P. Bohannon, Jr., for the appellees (named defendant board of education of the city of Bridgeport et al.).

Steven D. Ecker, with whom, on the brief, was *Peter M. Haberlandt*, for the appellees (defendant Robert Trefry et al.).

John B. Orleans filed a brief for Bridgeport Education Fund, Inc., et al., as amici curiae.

Opinion

ZARELLA, J. The dispositive issue in this reservation is whether the state board of education (state board), violated General Statutes § 10-223e (h)[1] when it authorized the commissioner of education (commissioner) to reconstitute the board of education of the city of Bridgeport (local board).[2] Specifically, we must determine whether the failure of the state board to require the local board to undergo and complete training, as mandated by § 10-223e (h), rendered void the state board's authorization to the commissioner to reconstitute the local board. In that connection, we also must address whether a resolution, which a majority of the local board passed, requesting that the state board authorize reconstitution of the local board resulted in a waiver of the state board's obligation to require training. We conclude that the state board's failure to require training rendered void its authorization of reconstitution under § 10-223e (h) and that the local board's resolution had no effect on the operation of the statute. We therefore answer the dispositive question in the affirmative.

I

The following undisputed facts and procedural history are relevant to our analysis. The state board has designated the school district of the city of Bridgeport (local school district) a low achieving school district under § 10-223e (c) (1)[3] for at least seven consecutive years. The local school district also has failed to make acceptable progress toward benchmarks established by the state board, pursuant to § 10-223e (a) and (c), and has failed to make adequate yearly progress pursuant to the requirements of the federal No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425, codified as amended at 20 U.S.C. § 6301 et seq. (2006 & Sup. III 2009), for at least two consecutive years while being designated as a low achieving school district. Students at virtually all levels in the local school district generally underperform on proficiency tests offered in recent years. Specifically, in the 2009–2010 school year, only 66.5 percent of students in the local school district in grades three through eight were proficient in mathematics and only 53.5 percent were proficient in reading, as measured by the Connecticut Mastery Test. Similarly, for the same period, only 32.3 percent of students in grade ten were proficient in mathematics and only 39.5 percent were proficient in reading, as measured by the Connecticut Academic Performance Test.

The local board was established by the charter of the city of Bridgeport (charter), with all the powers of and duties imposed on boards of education under Connecticut and federal laws. See Bridgeport Charter, c. 15, § 2. Pursuant to the charter, the local board consists of nine members, who must be electors of the city of Bridgeport

and serve four year terms. Id., § 1 (a). Elections for the local board are staggered so that, every two years, either four or five members of the local board are elected. See id., § 1 (b) and (c). The charter further provides that, in the event of any vacancy in the membership of the local board, the remaining members will elect a new member, of the same political party as the vacated member, for the balance of the term. Id., § 1 (d).

Prior to August 5, 2011, the local board was composed of Barbara Bellinger, the president, Leticia Colon, the vice president, Delores Fuller, the secretary, and Nereyda Robles, Thomas Cunningham, Thomas Mulligan, Maria Pereira, Bobby Simmons and Sauda Baraka. All members were elected by the electors of the city of Bridgeport. In 2011, four local board members, namely, Bellinger, Fuller, Robles and Cunningham, were at the end of their four year terms, and their positions were set to be filled no later than the November, 2011 Bridgeport municipal general election. The other five members, namely, Colon, Mulligan, Pereira, Simmons and Baraka, had another two years remaining on their terms as of 2011.

In 2010, some members of the local board had sought and completed certain training offered by the Connecticut Association of Boards of Education. The first training session, which was held on March 5, 2010, focused on the roles and responsibilities of the local board and its members, and provided certain tools and techniques for holding more productive local board meetings. All local board members except Simmons and Baraka attended this session. The second training session, held on October 5, 2010, focused on the state Freedom of Information Act and Robert's Rules of Order. All members except Simmons, Baraka and Robles attended this session. Neither of these training sessions was mandated or required by the state board.

Beginning in January, 2011, and continuing through July 5, 2011, local elected officials in the city of Bridgeport consulted with either or both the chairman of the state board, Allan B. Taylor, and then acting commissioner of education, George A. Coleman, regarding the possibility of the state board reconstituting the local board following a formal request by the local board. Local board members Simmons, Baraka and Pereira were not aware of, informed of or asked to participate in these communications any time prior to July 1, 2011.

On Friday, July 1, 2011, at 4:55 p.m., a notice of a special meeting of the local board, to take place on Tuesday, July 5, 2011, at 6 p.m., was issued by Fuller. The agenda for the special meeting, as provided in the notice, included a discussion and vote on two resolutions concerning requests and recommendations to the state board. Copies of both resolutions were attached to the notice. The local board convened the special meeting on July 5, 2011, with all nine members present.

By a vote of six to three, the local board passed the resolution concerning the reconstitution request (resolution), with local board members Baraka, Pereira and Simmons voting against it. The resolution provided, inter alia, that the local board (1) was unable to function effectively, (2) could not properly and effectively oversee the local school district and meet its improvement plan, and (3) had received training to help it function more effectively as a board but that this training had not enabled it to meet its responsibilities and, further, that additional training would not be helpful.[4] In light of these circumstances, the resolution requested that the state board authorize the commissioner, pursuant to § 10-223e (h), to reconstitute the local board.

The following day, July 6, 2011, the state board held its regularly scheduled monthly meeting, which was open to the public. After the meeting was called to order, the state board voted unanimously to add the local board resolution to its agenda. During the meeting, the state board received public comment regarding the resolution and then voted, five to four, to authorize the commissioner to reconstitute the local board. On July 14, 2011, Coleman sent a letter to Bellinger, the local board's president, copying all other local board members and giving notice of his intention to reconstitute the local board pursuant to the authority granted to him by the July 6, 2011 vote of the state board. On August 5 and 16, 2011, Coleman appointed seven new members to the local board: Robert Trefry, Kenneth Moales, Jr.; Michelle Black Smith-Tompkins; David Norton; Jaqueline Kelleher; Judith Bankowski; and Hernan Illingworth (reconstituted board). The effect of these appointments was to remove all previous members of the local board from their positions. By operation of § 10-223e (h), the members of the reconstituted board retain their positions for at least three years, during which time no local elections will be held for positions on the local board.

Shortly after Coleman's July 14, 2011 letter to the local board, former local board members Pereira and Simmons filed an action in the Superior Court against the state board, Coleman, Bill Finch, the mayor of the city of Bridgeport, John Ramos, the superintendent of schools for the city of Bridgeport, former local board members Bellinger, Colon, Fuller, Robles, Cunningham and Mulligan, and reconstituted board members Trefry, Moales, Smith-Tompkins, Norton, Kelleher, Bankowski and Illingworth. Around the same time, Robert Walsh, George Pipkin and Pertrinea Cash-Deedon, electors of the city of Bridgeport who had submitted over 3000 petition signatures in order to qualify as candidates for the local board, filed an action in the Superior Court against the defendants in the Pereira case, as well as Santa I. Ayala, democratic registrar of voters of the city of Bridgeport, and Alma L. Maya, the town clerk of the city of Bridgeport. Also around the same time, Laurayne

Farrar-James and Shavonne Davis, residents of the city of Bridgeport, Barbara Pouchet, resident of the city of Bridgeport and potential candidate for the local board, and Bakara, former member of the local board, filed an action in the Superior Court against the local board, Ramos, Bellinger, the state department of education, Coleman and Taylor.[5]

The complaints in all three actions alleged state statutory and constitutional violations, and one or more of the complaints sought, inter alia, (1) a declaratory ruling that § 10-223e (h) is unconstitutional under the state constitution, (2) a declaratory ruling that the acts of the defendants were in violation of the state constitution, (3) a declaratory ruling that the dissolution of the local board was in violation of the requirements of § 10-223e (h), with the effect that the reconstituted board had been improperly seated, (4) a writ of mandamus ordering that Ayala, the democratic registrar, and Maya, the town clerk, accept the petitions of candidates for the local board and place them on the ballot for the Bridgeport municipal elections in 2011, (5) a temporary injunction precluding the state board, Ramos, Coleman and Taylor, among others, from taking any further action with regard to reconstituting the local board, (6) an order requiring Pereira, Simmons and Baraka to be restored as members of the local board, (7) compensatory and punitive damages, and (8) any other legal or equitable relief to which they were entitled.[6]

The three cases then were transferred to the judicial district of Waterbury, Complex Litigation Docket. Recognizing the need for an expeditious resolution of the underlying issues, the parties requested that the trial court reserve the action for the advice of this court pursuant to Practice Book § 73-1.[7] Our analysis of the issues raised by the reservation follows.

II

A

The resolution of this reservation, and the underlying case, is determined by the language and application of § 10-223e (h). Specifically, we must decide whether a statutory provision in § 10-223e (h) mandating that the state board require a local board of education to undergo and complete certain training before the state board authorizes reconstitution of that local board can be waived.[8] The plaintiffs claim that the statute's provisions are mandatory and that the state board lacked the authority to authorize reconstitution of the local board because it failed to follow the statute. Additionally, the plaintiffs claim that the authority on which the defendants rely in seeking to extend the doctrine of waiver to the facts of this case is unpersuasive and that, even if waiver can apply, no grounds exist for finding that the local board waived the state board's obligation under the statute. The defendants respond that the local

board may and did waive the state board's obligation to require the local board to undergo and complete training before the state board authorized reconstitution.[9] We conclude that the statute's provisions are mandatory and not waivable, and, therefore, that the state board improperly authorized the reconstitution of the local board.

The proper application of § 10-223e (h) presents a question of statutory interpretation, over which our review is plenary. See, e.g., *Connecticut Podiatric Medical Assn.* v. *Health Net of Connecticut, Inc.*, 302 Conn. 464, 471, 28 A.3d 958 (2011). We are guided by well established principles of statutory construction. See id.

We begin with the foundational principle that, when interpreting statutes, "[o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *Grady* v. *Somers*, 294 Conn. 324, 333, 984 A.2d 684 (2009).

We first consider the relevant language of General Statutes § 10-223e (h): "The State Board of Education may authorize the Commissioner of Education to reconstitute a local or regional board of education pursuant to subdivision (2) of subsection (d) of this section for a period of not more than five years. *The board shall not grant such authority to the commissioner unless the board has required the local or regional board of education to complete the training described in subparagraph (M) of subdivision (2) of subsection (c) of this section.* . . ." (Emphasis added.) The plain language of the statute conveys a mandatory procedure to be followed if the state board should choose to authorize reconstitution, particularly through the use of the phrase "shall not grant such authority to the commissioner unless . . . ." General Statutes § 10-223e (h); see *Wiseman* v. *Armstrong*, 295 Conn. 94, 101, 989 A.2d 1027 (2010) ("[d]efinitive words, such as must or shall, ordinarily express legislative mandates of nondirectory

nature . . . [and] the word shall creates a mandatory duty when it is juxtaposed with [a] substantive action verb" [citation omitted; internal quotation marks omitted]). "The test to be applied in determining whether a statute is mandatory or directory is whether the prescribed mode of action is the essence of the thing to be accomplished, or in other words, whether it relates to a matter of substance or a matter of convenience. . . . If it is a matter of substance, the statutory provision is mandatory. If, however, the legislative provision is designed to secure order, system and dispatch in the proceedings, it is generally held to be directory, especially [when] the requirement is stated in affirmative terms unaccompanied by negative words. . . .

"The legislature, rather than phrasing the [statutory provision] in affirmative terms unaccompanied by negative words, as is often done with directory provisions . . . instead chose . . . negative phrasing . . . . The legislature's use of such negative terminology suggests that it intended [the statutory provision] to be mandatory." (Citations omitted; internal quotation marks omitted.) *Santiago* v. *State*, 261 Conn. 533, 540–41, 804 A.2d 801 (2002); see also *Stewart* v. *Tunxis Service Center*, 237 Conn. 71, 78, 676 A.2d 819 (1996) ("[t]he legislature's use of such negative terminology suggests that it intended [the statutory provision] to be mandatory"). In other words, the statutory language supports the conclusion that the state board may not authorize reconstitution until it has required the local board to undergo and complete the training described in § 10-223e (c) (2) (M).

Because it is necessary to our understanding of the training requirement, we also review § 10-223e (c).[10] Generally, § 10-223e (c) sets forth the state board's obligation to supervise low achieving schools or school districts, and provides the various mechanisms that the state board can use to improve the conditions of those schools and school districts. Section 10-223e (c) (1) uses strong, presumptively mandatory language in describing the role that the state board occupies with regard to low achieving schools and districts: "Any school or school district identified as in need of improvement . . . *shall* be designated and listed as a low achieving school or school district and *shall* be subject to intensified supervision and direction by the State Board of Education." (Emphasis added.) General Statutes § 10-223e (c) (1). The second part of subsection (c) lists thirteen separate actions, or any combination thereof, that the state board "shall" undertake "to improve student performance and remove the school or district from the list of schools or districts designated and listed as a low achieving school or district . . . and to address other needs of the school or district . . . ." General Statutes § 10-223e (c) (2). Specifically, this list of actions includes the training provision referenced in § 10-223e (h): "[The state board shall] require

local and regional boards of education to (i) undergo training to improve their operational efficiency and effectiveness as leaders of their districts' improvement plans . . . ." General Statutes § 10-223e (c) (2) (M). The plain language of § 10-223e (c), like that of § 10-223e (h), denotes a mandatory and affirmative obligation on the part of the state board to pursue one or more remedial actions to remove the low achieving designation from schools and districts. Significantly, all of these actions focus on improving local operations through providing training, aid and other supervisory techniques, without granting the state board the authority to alter or affect the constitution of a local board of education. Simply put, by referencing the training provision of § 10-223e (c) (2) (M) in § 10-223e (h), the legislature has highlighted the importance of this one action, in a series of many, that the state board shall pursue in its capacity of supervising and improving low achieving schools and districts.

Particularly significant to an understanding of the operation of § 10-223e (h) is the relevant language of General Statutes § 10-223e (d): "The State Board of Education *shall monitor* the progress of each school or district designated as a low achieving school or district pursuant to subdivision (1) of subsection (c) of this section *and provide notice* to the local or regional board of education for each such school or district of the school or district's progress toward meeting the benchmarks established by the State Board of Education pursuant to subsection (c) of this section. If a district fails to make acceptable progress toward meeting such benchmarks established by the State Board of Education and fails to make adequate yearly progress pursuant to the requirements of the No Child Left Behind Act . . . for two consecutive years while designated as a low achieving school district, the State Board of Education, *after consultation with the Governor and chief elected official or officials of the district*, may . . . notwithstanding the provisions of chapter 146, any special act, charter or ordinance, grant the Commissioner of Education the authority to reconstitute the local or regional board of education for such school district in accordance with the provisions of subsection (h) of this section." (Emphasis added.)

Thus, when § 10-223e (h) is analyzed in the context of § 10-223e (c) (1) and (2), the logical inference is that the state board should pursue the remedial actions in § 10-223e (c) (2), with regard to the low achieving school or school district overseen by a local or regional board of education, before it pursues the seemingly severe remedy of reconstituting that local or regional board of education under § 10-223e (h). The clear and specific reference in § 10-223e (h) to § 10-223e (c) (2) (M) suggests that the reconstitution remedy in § 10-223e (h) is not meant to entirely supplant or to render superfluous the other, less drastic, remedies set forth

in § 10-223e (c) (2). See, e.g., *Brown & Brown, Inc.* v. *Blumenthal*, 297 Conn. 710, 726, 1 A.3d 21 (2010) ("[w]e cannot countenance a reading of a statute that would render it superfluous"). Indeed, the apparent function of § 10-223e (c) is to provide the state board with the appropriate tools to use in fulfilling its obligation of intensified supervision of low achieving schools and districts. By specifically singling out and referencing subparagraph (M) of § 10-223e (c) (2) in § 10-223e (h), it could reasonably be concluded that the legislature intended to underscore the importance of this specific remedial action with respect to local boards of education that oversee low achieving schools or districts.[11] Accordingly, on the basis of the plain statutory language, we conclude that § 10-223e (h) mandates that the state board require a local board of education to complete the training contemplated under § 10-223e (c) (2) (M) before the state board can authorize its reconstitution.

None of the parties disputes the mandatory nature of the training requirement in § 10-223e (h).[12] Rather, the defendants contend that the training requirement can be waived, which would allow the state board to authorize reconstitution without first providing training. Section 10-223e (h) is silent as to whether the training requirement can be waived. Additionally, we cannot find, and neither party has provided us with, any other relevant statutory provision pertaining to the waiver of this requirement. Cf., e.g., General Statutes § 10-184b ("[n]otwithstanding any provision of the general statutes or public or special act granting the Commissioner of Education the authority to waive provisions of the general statutes, the Commissioner of Education shall not limit the authority of parents or guardians to provide for equivalent instruction"). The defendants argue, however, that compliance with § 10-223e (h), like any other mandatory statutory provision, can be waived by the local board and that the state board can properly rely and act on that waiver to authorize reconstitution without requiring the statutorily mandated training.[13]

We cannot confidently conclude, on the basis of the language of the statute alone, whether the provision is waivable, and we previously have held that mandatory statutory provisions sometimes may be waived. See, e.g., *Stewart* v. *Tunxis Service Center*, supra, 237 Conn. 80. In light of this ambiguity, we consult the pertinent extratextual sources to discern legislative intent. See, e.g., *McCoy* v. *Commissioner of Public Safety*, 300 Conn. 144, 150–51, 12 A.3d 948 (2011) ("[w]hen a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter" [internal quotation marks omitted]).

Before proceeding, we pause briefly to reiterate the issue before the court in this reservation and, thus, the scope of our holding. The statutory scheme at issue in this reservation is embodied in § 10-223e, which, as we subsequently explain in more detail, represented a change in Connecticut's administration of public education. Through § 10-223e, the legislature expanded the state board's involvement in the quotidian affairs of low achieving schools and school districts. The state board now has the authority to make administrative and policy determinations for these schools and districts; see General Statutes § 10-223e (c); authority that formerly was only within the purview of local or regional boards of education. The dispositive issue raised by this reservation, however, concerns not the shift in power from local boards of education to the state board under § 10-223e generally. Instead, the parties have asked us to determine the very narrow question of the specific process that the legislature intended under § 10-223e (h), a more recent addition to § 10-223e. See Public Acts 2010, No. 10-111, § 21 (amending General Statutes [Sup. 2010] § 10-223e by adding, inter alia, subsection [h]). We therefore focus primarily on the legislative intent and policy behind subsection (h), as informed by the legislature's decision to initially restrict to the General Assembly the power to reconstitute local boards.[14] See Public Acts, Spec. Sess. June, 2007, No. 07-3, § 32, codified at General Statutes (2008 Sup.) § 10-223e (d).

With that in mind, we turn first to remarks made by legislators during the House floor debate concerning the proposed amendment to § 10-223e that would provide the state board with a mechanism to authorize reconstitution of underperforming local or regional boards of education.[15] Representative Marilyn Giuliano, noting that reconstituting a local board of education was a "significant usurpation of powers," inquired into the procedures and "exact criteria that would give the commissioner such full-blown powers to dissolve a *duly-elected*, *by the people*, [b]oard of [e]ducation . . . ." (Emphasis added.) 53 H.R. Proc., Pt. 14, 2010 Sess., p. 4581. Responding directly to this inquiry, Representative Andrew M. Fleischmann stated that "the commissioner would first have to find that he had a school board that was overseeing a school district that was a low-achieving district consistently for several years, *and that the board was actually an impediment to moving forward with reforms*. . . . [I]f that's happening, and I'm not sure if it's happening in Connecticut . . . [*t*]*he members of the board can be retrained by the* [*s*]*tate* [*d*]*epartment of* [*e*]*ducation. And if after that training that board continues to be an impediment to execution of reforms*, *then and only then would the commissioner consider reconstituting that board* . . . ." (Emphasis added.) Id., pp. 4581–82. Representative Vincent J. Candelora raised a similar question, to which Representative Fleischmann provided a virtually

identical response, underscoring the fact that the state board could authorize the reconstitution of the local board only after the local board completed the training provided by the state board for this specific purpose.[16] 53 H.R. Proc., Pt. 15, 2010 Sess., p. 4675, remarks of Representatives Candelora and Fleischmann.

In addition to the foregoing remarks, we find elucidating certain relevant testimony and remarks from an education committee hearing regarding the proposed amendment to § 10-223e. During the hearing, Mark K. McQuillan, the commissioner of education at the time of the hearing in 2010, testified regarding the need for amending § 10-223e to permit the state board to authorize the reconstitution of local and regional boards of education in certain, limited circumstances. Conn. Joint Standing Committee Hearings, Education, Pt. 4, 2010 Sess., p. 1046. In discussing his understanding of the proposed amendment, McQuillan stated that reconstitution would follow the "process outlined in the legislation [and] *would be very sparingly used*"; (emphasis added) id.; and that it would be used "in a process that . . . would involve [the Connecticut Association of Boards of Education] and would be one that would be administered . . . *with a measured but deliberate insistence that things change*." (Emphasis added.) Id., p. 1049. Following McQuillan's testimony, Representative Fleischmann, a co-chairman of the education committee, noted: "There's a tension between trying to get things done and respecting the *will of the people* in democracy. And one of the concerns . . . would be taking a body that had been elected by the folks in a given town and dispersing them . . . and, instead, giving the power, essentially, to [the commissioner] and the [s]tate board." (Emphasis added.) Id. In response to Representative Fleischmann's concerns, McQuillan agreed that "it is very, very important that . . . the *democratic-elected officials* remain in the positions if they are prepared and demonstrate the capacity to do the leadership." (Emphasis added.) Id. McQuillan explained that, "when we look at the question of reconstituting a board, it isn't simply throwing them all out or suggesting that everyone has to leave. . . . [*I*]*t would involve a process of having a procedure in place* . . . ." (Emphasis added.) Id., pp. 1049–50. Thereafter, McQuillan summarized the envisioned operation of the proposed amendment by stating that, "*in rare instances*—and I'm saying 'in rare instances,' not the general pattern—we have found that it would be necessary to have [the] authority" to reconstitute a local board.[17] (Emphasis added.) Id., p. 1051.

During the same education committee hearing, Representative Deborah Heinrich raised her own concern about providing the state board with the authority to reconstitute local boards of education: "I'm a little confused about how one can reconstitute an elected board. And maybe I'm missing something in here, but *the people*

elected their board and so then . . . the [s]tate [d]epartment of [education] would then turn around and say, [y]ou're no longer elected?" (Emphasis added.) Id., pp. 1137–38. Shortly thereafter, Representative Paul Davis questioned Richard Murray, a member of the board of directors of the Connecticut Association of Boards of Education, whether it was "[that association's] position . . . [that it] feel[s] okay with some sort of language that would permit the [c]ommissioner to [reconstitute a local board]?" Id., p. 1139. Murray responded: "I think *in extreme circumstances*."[18] (Emphasis added.) Id.

From the foregoing testimony and remarks, we distill three general principles of legislative intent behind § 10-223e (h). First, remarks of various representatives coupled with the testimony of McQuillan make clear that reconstitution is an extreme remedy, to be used only sparingly *after* it becomes apparent that other remedial measures have failed to produce results. Second, the testimony and remarks track the plain language of the statute, which mandates that the state board require a local board of education to undergo and complete training before the state board authorizes reconstitution of the local board. It also appears that certain legislators anticipated that the state board would reassess its initial decision to pursue reconstitution after the local board successfully completes training.[19] In other words, the legislators and McQuillan both appeared to view the proposed statute as a new grant of authority to the state board, but one that was predicated on the state board first requiring the local board to undergo and complete training, as contemplated by § 10-223e (c) (2) (M). Third, any time that a legislator expressed concern over the ramifications of allowing the state board to authorize reconstitution of a local board of education, that concern was grounded specifically in the usurpation of local democratic will. In other words, there was a concern that reconstitution, especially one without any procedural check in place, would trample on the rights of the people who had duly and democratically elected their representatives to the local board. Little concern, if any, was expressed regarding the rights of the local boards of education or the members of those boards. Indeed, there apparently was no discussion about whether local boards could seek out reconstitution or could waive the state board's obligation to require training.

On the basis of the foregoing principles, we conclude that the legislature intended the training provision to serve the following purposes. First, requiring training prior to authorizing reconstitution provides notice to a local board of education—and, theoretically, to the electors of that local board—that the state board is considering authorizing reconstitution. Second, and related to the first, the training itself serves a substantive and remedial purpose, by providing the local board

of education with an opportunity to prevent its reconstitution by successfully completing training and thereby demonstrating to the state board that it can operate effectively and that the extreme measure of reconstitution is unnecessary. Viewed this way, the training provision is premised on the importance of maintaining the continued local operations of a democratically elected board of education, as well as on providing certain due process protections.[20] Third, and most importantly, the state board does not have the authority to authorize reconstitution until it first requires the local board to undergo and complete training in accordance with § 10-223e (c) (2) (M). When viewed together, these principles share a common thread, namely, that the legislature intended that the state board would follow a clear, transparent and deliberate process if it decides to authorize reconstitution of an underperforming local board of education. Such a process would put members of a local board, the local electors of that board and the citizens of this state on notice that the state board is considering reconstitution. Thus, all of these parties would be aware of both the process and time frame in which reconstitution potentially could occur.

In that connection, we highlight the concern expressed by numerous legislators and other interested parties[21] that granting the state board the authority to reconstitute local boards of education represented a significant enlargement of the power previously held by the state board. As McQuillan testified, prior to the enactment of § 10-223e (h), the state board could not alter or interfere with the specific composition of a local or regional board of education. As the legislative history of § 10-223e (h) demonstrates, that provision was envisioned as a specific, narrow grant of power to the state board to remove the last vestige of local control over low achieving schools and school districts. The legislative history is replete with references to the potentially far-reaching ramifications of allowing the state board to reconstitute democratically elected local boards of education and supports the conclusion that the training provision of § 10-223e (h) is intended to circumscribe the state board's power. Put differently, the legislature intended that the state board would acquire the power to authorize reconstitution *if and only if* the state board first satisfied the training requirement provision. With this understanding of the legislative history and intent, we cannot accept the proposition that a statutory provision, in the form of a condition precedent, meant to ensure transparency, could be waived, even by a local board of education.

Additionally, the legislative history makes clear that, to the extent that the training provision serves a protective function as well, it does not exist only for the protection of the local board of education, as the defendants contend. Rather, the protection benefits the local electors of that local board and the democratic process

as a whole. See, e.g., 53 H.R. Proc., Pt. 14, 2010 Sess., p. 4581 (noting that it would be "[a] significant usurpation of powers" to "dissolve a *duly-elected*, *by the people*, [b]oard of [e]ducation" [emphasis added]), remarks of Representative Giuliano.[22] Certainly, the training requirement confers some benefit on and protection to a local board of education. Nevertheless, it is apparent that the training requirement was meant to serve as a check on the state board's power, with an added benefit that it serves as a protection of the democratic will of the people who elected their local boards of education.[23] Accordingly, the legislative history supports the conclusion that the legislature did not intend the training requirement to be waivable by any party, including a local board of education seeking reconstitution.

Our conclusion is further buttressed by the longstanding policy in Connecticut of local, rather than state, control over schools and school districts, as evidenced in the statutory scheme governing local and regional boards of education. See *Interlude, Inc.* v. *Skurat*, 266 Conn. 130, 143, 831 A.2d 235 (2003) ("[i]n determining the legislative intent of a particular statute, we also look to other relevant statutes governing the same or similar subject matter, for it is well established that we consider the statutory scheme as a whole and presume that the legislature intended to create a harmonious body of law" [internal quotation marks omitted]). As we noted previously, the state board is obligated to utilize various tools under § 10-223e (c) (2) to improve performance in low achieving schools and school districts. The significance of the reference in § 10-223e (h) to the training requirement in § 10-223e (c) (2) (M), as a prerequisite to the state board's authority to reconstitute a local board of education, should not be ignored. Rather than provide the state board with unfettered power to authorize reconstitution, the legislature explicitly tied the state board's power to its existing obligation under § 10-223e (c) (2) to supervise low achieving schools and districts while attempting to preserve their local composition. With the exception of reconstitution, the statutory scheme sets forth a framework in which the state board must work in conjunction with local schools and boards. Thus, these statutory provisions seek to promote local control, allowing the state board to authorize reconstitution only after working with the local school or board of education to improve its performance. In that regard, the reference in § 10-223e (h) to § 10-223e (c) (2) (M) can easily be understood as signaling the legislature's preference that the state board pursue the cooperative remedial and supervisory options under § 10-223e (c) (2) prior to eliminating all local control through reconstitution. We reiterate that such a reading is supported by the relevant legislative history.

We cannot ignore the fact that the foundational issue, both with regard to § 10-223e (h) and the operation of

the state board and local boards of education, is how to provide students with the best possible education.[24] The underpinning of the statutory scheme in § 10-223e is the obligation of the state board to ensure that each child has at least "a suitable program of educational experiences . . . ." General Statutes § 10-4a (1). Nevertheless, the relevant statutes concerning the respective duties of the state board and local boards of education also demonstrate a clear policy of defining a supervisory role for the state board separate and distinct from local boards, which, by their very nature, are most responsive to the needs of the local school district and the will of the local population. For example, General Statutes § 10-220 (a) provides in relevant part that "[e]ach local or regional board of education shall maintain good public elementary and secondary schools . . . [and] implement the educational interests of the state," and § 10-220 (b) provides in relevant part that "[t]he board of education of each local or regional school district shall, *with the participation of parents*, *students*, *school administrators*, *teachers*, *citizens*, [*and*] *local elected officials* . . . prepare a statement of educational goals for such local or regional school district. . . ." (Emphasis added.) General Statutes § 10-220 (b); see also General Statutes § 10-220 (e) ("Each local and regional board of education shall establish a school district curriculum committee. The committee shall recommend, develop, review and approve all curricul[a] for the local or regional school district."); General Statutes § 10-4g (a) ("[t]he State Board of Education shall develop and distribute to all local and regional boards of education a model program to encourage the participation of parents and the community in the local or regional educational system"); General Statutes § 10-4g (b) ("[t]he State Board of Education shall develop a program to encourage local and regional boards of education to develop and implement plans to involve parents of students in the educational process in that district and to increase community involvement in the schools"); General Statutes § 10-221 (a) ("[local and regional] [b]oards of education shall prescribe rules for the management, studies, classification and discipline of the public schools"); General Statutes § 10-221 (b) ("each local and regional board of education shall develop, adopt and implement written policies concerning homework, attendance, promotion and retention").

In sum, "[t]he state's responsibility for education is distributed through the . . . statutory framework. The state board is charged with the broad and general power to supervise and control the educational interests of the state." (Internal quotation marks omitted.) *New Haven* v. *State Board of Education*, 228 Conn. 699, 703, 638 A.2d 589 (1994). Section 10-220 "delegates the duty to provide and administer public education to local and regional boards of education." Id., 703–704; see also *West Hartford Education Assn., Inc.* v. *DeCourcy*, 162

Conn. 566, 573, 295 A.2d 526 (1972) ("The chief function of local boards of education is to serve as policy maker *on behalf of the state and for the local community* on educational matters. The state has had a vital interest in the public schools from the earliest colonial times. . . . Article VIII, § 1, of the Connecticut constitution provides that '[t]here shall always be free public elementary and secondary schools in the state. The [G]eneral [A]ssembly shall implement this principle by appropriate legislation.' Obviously, the furnishing of education for the general public is a state function and duty. . . . By statutory enactment *the legislature has delegated this responsibility to the local boards who serve as agents of the state in their communities. . . . Our statutes have conferred on the local board broad power and discretion over educational policy.*" [Citations omitted; emphasis added.]).

Indeed, this court has noted that the state board and local boards of education occupy distinct roles within the administration of Connecticut's public education system.[25] General Statutes § 10-4 (a) prescribes the role of the state board as one of "general supervision and control . . . ." Local boards of education, by contrast, must "fulfill the educational interests of the state by meeting certain mandates. . . . Public education mandates include the following: adequate and reasonable pupil transportation for those students who need transportation . . . special education services sufficient to meet the individualized needs of certain children in the locality . . . and the [minimum expenditure requirement]. If the local board of education fails or is unable to implement the educational interests of the state by carrying out these mandates, the state board may conduct an investigation, hold an administrative hearing pursuant to the Uniform Administrative Procedure Act [General Statutes § 4-166 et seq.], order appropriate remedial steps, and, if necessary, enforce its order in the Superior Court." (Citations omitted.) *New Haven* v. *State Board of Education*, supra, 228 Conn. 704–705. As our analysis in *New Haven* underscores, prior to the enactment of § 10-223e (h), the state board possessed a variety of tools to ensure that local boards of education were fulfilling their statutory obligations. As we noted, however, the state board previously lacked the power to authorize the drastic remedy of removing a locally elected board of education through reconstitution.

In that regard, the reconstitution authority found in § 10-223e (h) is an exception to the general rule that local educational matters are managed by local boards of education comprised of locally elected members. Even local boards of education overseeing low achieving schools and districts do not lose their local autonomy entirely simply because they are subject to additional supervision and direction by the state board pursuant to § 10-223e (c). Rather, the operation of the cooperative and remedial actions contemplated by § 10-

223e (c) (2) provide for a combination of local and state control. Only if the state board chooses to exercise the extreme remedy of reconstitution will a local board of education be entirely supplanted by state appointed board members.[26]

We are nonetheless cognizant that the statutory scheme embodied in § 10-223e altered the respective roles of the state board and the local boards of education with respect to low achieving schools and districts. In that regard, we agree with the dissent that § 10-223e, when first enacted without subsection (h), represented a sea change in educational policy in this state. Section 10-223e shifted control and administration of underperforming schools and districts away from a purely local framework to one of increased state intervention. What is clear, however, is that the legislature, in granting the state board these additional powers under § 10-223e, did not initially provide the state board with reconstitution authority. Instead, the statute initially limited reconstitution authority to the General Assembly. See Public Acts, Spec. Sess., June, 2007, No. 07-3, § 32, codified at General Statutes (2008 Sup.) § 10-223e (d). Only after the state failed to qualify for federal Race to the Top funding did the legislature amend § 10-223e by adding subsection (h) to grant the state board the authority to reconstitute a local board of education. See, e.g., 53 H.R. Proc., Pt. 14, 2010 Sess., p. 4554 ("the amendment that stands before us [which includes granting the state board reconstitution authority] is essentially Connecticut's Race to the Top education reform legislation for the year"), remarks of Representative Fleischmann. It is therefore apparent that the legislature did not intend that the state board's reconstitution authority would supersede the existing, comprehensive statutory scheme that provided for other means of supervising and intervening in local educational issues.[27]

In light of the foregoing discussion, we conclude that the legislature did not intend § 10-223e (h) to supplant Connecticut's long-standing policy of preferring and preserving locally elected boards of education.[28] Although the balance of that control has shifted in recent years with regard to low achieving schools and school districts, we remain unconvinced that the legislature intended to allow the state board to authorize reconstitution of an elected local board of education in any manner other than that specified by the statute. As we noted previously, in simplest terms, the training provision represents the legislature's intent that, in the rare event that a local board of education should be reconstituted, reconstitution would occur in a methodical, deliberate and transparent manner. This provides the local electors, local board and other citizens of the state with notice of the process and the time frame in which reconstitution potentially could occur.

Notwithstanding the foregoing, the defendants rely on the proposition that both constitutional and statutory rights are waivable.[29] E.g., *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, 292 Conn. 1, 57, 970 A.2d 656, cert. denied sub nom. *Bridgeport Roman Catholic Diocesan Corp.* v. *New York Times Co.*, U.S. , 130 S. Ct. 500, 175 L. Ed. 2d 348 (2009); *New Haven* v. *Local 884, Council 4, AFSCME, AFL-CIO*, 237 Conn. 378, 385, 677 A.2d 1350 (1996). The defendants claim that "[t]he object of [§ 10-223e (h)] is not about the performance of any individual board member but the ability of the local board, as an agent of the state in providing education, to make adequate progress. . . . *Training is thus a requirement the local board as a collective body, not its individual members, may waive.*" (Citations omitted; emphasis added.) We therefore read the defendants' waiver argument to mean that the training requirement in § 10-223e (h) exists solely for the protection of the local board, and, for that reason, the board may choose to waive that protection.

In order to adequately address and dispose of the defendants' argument, we begin by briefly reviewing the doctrine of waiver, with particular focus on the principles espoused in the cases on which the defendants rely. "Waiver is the intentional relinquishment or abandonment of a known right or privilege. *Johnson* v. *Zerbst*, 304 U.S. 458, 464, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938); *C. R. Klewin Northeast, LLC* v. *Bridgeport*, [282 Conn. 54, 86, 919 A.2d 1002 (2007)]. As a general rule, both statutory and constitutional rights and privileges may be waived. *New Haven* v. *Local 884, Council 4, AFSCME, AFL-CIO*, [supra, 237 Conn. 385]. Waiver is based [on] a species of the principle of estoppel and [when] applicable it will be enforced as the estoppel would be enforced. . . . Estoppel has its roots in equity and stems from the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed . . . . Waiver does not have to be express . . . but may consist of acts or conduct from which waiver may be implied. . . . In other words, waiver may be inferred from the circumstances if it is reasonable to do so." (Internal quotation marks omitted.) *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, supra, 292 Conn. 57–58. Finally, only the party for whom the right or protection benefits may waive that right. See 28 Am. Jur. 2d 662, Estoppel and Waiver § 196 (2011) ("[w]aiver is generally applicable to all *personal* rights and privileges" [emphasis added]); see also id., § 200, p. 667 ("Parties may not waive statutory rights where a question of public policy is involved. Likewise, a law established for a public reason cannot be waived or circumvented by a private act or agreement."). Thus, as a threshold matter, in addressing the defendants' waiver argument, we must determine (1) whether the training provision constitutes a right,

which would render the waiver doctrine applicable, and (2) if the training provision constitutes a right, the nature of that right and the party or parties who benefit from or are protected by the right.

We begin by noting that the state board is a statutorily created state agency; see General Statutes § 10-1 et seq.; and, therefore, is a body of limited authority that can act only pursuant to specific statutory grants of power. See, e.g., *Ethics Commission* v. *Freedom of Information Commission*, 302 Conn. 1, 8, 23 A.3d 1211 (2011). "It is well established that an administrative agency possesses no inherent power. Its authority is found in a legislative grant, beyond the terms and necessary implications of which it cannot lawfully function." (Internal quotation marks omitted.) Id.; see also *Kinney* v. *State*, 213 Conn. 54, 60 n.10, 566 A.2d 670 (1989) ("administrative agencies . . . must act strictly within their statutory authority" [citation omitted]); *State* v. *White*, 204 Conn. 410, 419, 528 A.2d 811 (1987) ("agencies must . . . act according to . . . strict statutory authority"). In the absence of a grant of authority from the legislature, any action taken by an agency is "void." (Internal quotation marks omitted.) *Stern* v. *Connecticut Medical Examining Board*, 208 Conn. 492, 498, 545 A.2d 1080 (1988).

That § 10-223e (h) conveys to the state board the power to authorize the reconstitution of a local or regional board of education is clear and not subject to debate, as the preceding analysis demonstrates. Section 10-223e (h) allows the state board itself to authorize reconstitution, *provided* that the state board first required the local board of education to undergo and complete training. In order to determine whether the state board properly authorized reconstitution of the local board in the present case, we must identify the scope of the authority granted by the statute.

We briefly reiterate that the stated and overarching purpose of § 10-223e is to improve the quality of education available to students in Connecticut's public schools by the improving accountability and performance of schools and school districts. See General Statutes § 10-223e (a) ("In conformance with the No Child Left Behind Act . . . the Commissioner of Education shall prepare a state-wide education accountability plan . . . . Such plan shall identify the schools and districts in need of improvement, require the development and implementation of improvement plans and utilize rewards and consequences."). Section 10-223e, and in particular § 10-223e (c) (2), contains various tools that the state board, in its supervisory role of educational matters, may utilize to fulfill this purpose. In light of the numerous options available to the state board prior to the enactment of § 10-223e (h), we construe the reconstitution authority delegated to the state board in § 10-223e (h) narrowly, so as not to supplant the other

remedies already available to the state board. Cf. *Thomas* v. *Dept. of Developmental Services*, 297 Conn. 391, 404, 999 A.2d 682 (2010) ("the legislature, in amending or enacting statutes, always [is] presumed to have created a harmonious and consistent body of law" [internal quotation marks omitted]). This construction aligns with general principles of statutory construction concerning (1) the determination of the mandatory nature of a statute; see 3 J. Sutherland, Statutory Construction (7th Ed. Singer 2008) § 57:10, pp. 52–53 ("[when] a statute grants authority to do a thing and prescribes the manner of doing it, the rule is clear that the provision as to the manner of doing the thing is mandatory, even though the doing of it in the first place is discretionary"); id., § 57:12, p. 58 ("[a] statute which confers a new right, power, privilege or immunity, and prescribes a mode for its acquisition, preservation, enforcement or enjoyment is strictly construed and given mandatory effect"); and (2) statutes that confer authority to administrative agencies. See id., § 64:1, p. 449 ("[s]ince [agency] enabling legislation, through which all subordinate governmental instrumentalities must receive their authority, is a grant of sovereign power, it is subject to the usual rule of strict construction applicable to such grants"); id., § 65:2, pp. 508–509 ("[s]ince administrative agencies are purely creatures of legislation without inherent or common-law powers, the general rule applied to statutes granting powers to them is that only those powers are granted which are conferred either expressly or by necessary implication").

Simply put, the state board cannot reconstitute a local board of education without first requiring the local board to undergo and complete training. Requiring training is therefore a condition precedent to the state board's ability to authorize reconstitution. In other words, the state board lacks the power to authorize reconstitution until it first has required the local board to undergo and complete the training contemplated by § 10-223e (c) (2) (M).[30] The legislature has limited the state board's power to authorize reconstitution to the particular circumstance in which the state board has first required the local board of education to undergo and complete training.[31] Because the training provision defines the scope of the grant of power from the legislature to the state board, the local board of education, as a separate agent of the state, cannot alter the scope of this grant of power. See *Kinney* v. *State*, supra, 213 Conn. 60 n.10 ("administrative agencies . . . must act strictly within their statutory authority and cannot unilaterally modify, abridge or otherwise change . . . provisions because the act's enabling legislation does not expressly grant that power" [citation omitted]). It therefore follows that the local board cannot expand this grant of power by waiving the training obligation. This is an obligation that the legislature imposed on the state

board and one that defines the scope of the legislature's grant of power to the state board. Only the legislature may alter the scope of its grant of power to the state board. Put differently, a waiver would alter the grant of power by allowing the state board to sidestep its legislatively mandated obligation to require training.[32]

Accordingly, we conclude, on the basis of the language and purpose of § 10-223e (h), and the relevant legislative history, that (1) the training provision is a condition precedent to the state board's authority to authorize reconstitution, (2) the failure to satisfy the training provision renders the state board powerless to authorize reconstitution, and (3) because the training provision concerns the scope of the legislature's grant of power to the state board, the local board, as a separate agent of the state and a body inferior to the legislature, could not alter the scope of the grant by waiving the provision. Cf. *Dufraine* v. *Commission on Human Rights & Opportunities*, 236 Conn. 250, 265, 673 A.2d 101 (1996) ("[A]n administrative agency, as a tribunal of limited jurisdiction, must act strictly within its statutory authority. . . . [Thus, the] trial court exceeded its authority under [General Statutes] § 46a-84 when it bypassed this required step in the complaint process [and required the administrative agency to act in a manner not authorized by statute]." [Citations omitted; internal quotation marks omitted.]); *State* v. *State Employees' Review Board*, 231 Conn. 391, 406–407, 650 A.2d 158 (1994) ("[T]he statutes governing the [state employees' review board (review board)] contain no provision for the review board to retain jurisdiction and monitor compliance with its orders. An administrative agency, as a tribunal of limited jurisdiction, must act strictly within its statutory authority. . . . [An administrative agency] possesses no inherent power. Its authority is found in a legislative grant, beyond the terms and necessary implications of which it cannot lawfully function. . . . Absent a grant of authority, any sanction meted out by the board is necessarily void. . . . Thus, the trial court's attempt to cure the problem that it perceived as a result of a lack of finality by ordering the review board to retain jurisdiction over [the] appeal *imposed an authority on the review board that its governing statutes do not contemplate*." [Citations omitted; emphasis added; internal quotation marks omitted.]).

While this completes our analysis of § 10-223e (h), we nevertheless address the defendants' claim that the training provision benefits the local board and, therefore, that the local board can choose to waive that benefit. We accept the defendants' premise insofar as it embodies the concept that statutory rights are generally waivable by the party who benefits from or is protected by the right. Nevertheless, to determine whether the particular right embodied in the training provision is waivable, we must determine the nature of the right

itself. In our waiver jurisprudence, we have identified several specific circumstances in which the waiver doctrine may be appropriate.[33] The facts underlying the present case do not fit squarely within any of those circumstances. The only arguably relevant case that the defendants raise in support of their claim that "[e]ven if [the training provision is] characterized as a mandatory requirement, it is subject to waiver, and the [local] [b]oard chose to waive it," is *Stewart* v. *Tunxis Service Center*, supra, 237 Conn. 71. In that case, we held that the statutory time limit in General Statutes § 31-300 pertaining to the 120 day period within which workers' compensation decisions shall be issued, was mandatory but waivable. Id., 73–74. A closer examination of our holding in *Stewart*, however, reveals that it does not stand for the general proposition, advanced by the defendants, that any mandatory statutory provision can be waived. *Stewart* does not address what types of mandatory statutes may be waived or who may waive such provisions. Rather, we determined in *Stewart* only that the mandatory nature of a statute or provision does not, by itself, dictate whether the statute or provision is waivable.[34] See id., 78–80; cf. *New Haven* v. *Local 884, Council 4, AFSCME, AFL-CIO*, supra, 237 Conn. 380–90.[35]

Moreover, although it is generally true that privately held statutory and constitutional rights are waivable, not every mandatory statutory provision can be waived, even by the party who benefits or is protected under the statute. See 28 Am. Jur. 2d, supra, § 200, p. 667 ("Waivers of statutory rights are not favored. . . . Parties may not waive statutory rights [when] a question of public policy is involved. Likewise, a law established for a public reason cannot be waived or circumvented by a private act or agreement."); see also *Santiago* v. *State*, supra, 261 Conn. 543–44 ("Although we acknowledge that, typically, noncompliance with a mandatory statutory provision may be waived, either explicitly or implicitly, by the parties . . . those exceptions to the general rule requiring strict compliance with a mandatory statutory provision were created in recognition of the fact that a party may relinquish its right to demand strict adherence to a mandatory statutory provision by virtue of its own failure to enforce that right. . . . In light of this statutory objective, it is apparent that the [statutory requirement] serves important public and institutional policy objectives that are independent of, and perhaps even paramount to, the state's interest as a party to the litigation. Thus . . . any purported waiver by the state of the [statutory requirement] simply is not an adequate substitute for compliance with that requirement in light of the policy objectives of the statutory provision that embraces that requirement." [Citations omitted.]); cf. *Ambroise* v. *William Raveis Real Estate, Inc.*, 226 Conn. 757, 766–67, 628 A.2d 1303 (1993) ("[When] . . . a specific time limitation is contained

within a statute that creates a right of action that did not exist at common law, then the remedy exists only during the prescribed period and not thereafter. . . . In such cases, the time limitation is not to be treated as an ordinary statute of limitation, but rather is a limitation on the liability itself, and not of the remedy alone. . . . [U]nder such circumstances, the time limitation is a substantive and jurisdictional prerequisite, which may be raised . . . at any time, even by the court sua sponte, and may not be waived." [Internal quotation marks omitted.]).

We previously have held that "[o]ne cannot waive a public obligation created by statute . . . but he may waive a statutory requirement the purpose of which is to confer a private right or benefit." (Citation omitted.) *Hatch* v. *Merigold*, 119 Conn. 339, 343, 176 A. 266 (1935), citing *L'Heureux* v. *Hurley*, 117 Conn. 347, 356, 168 A. 8 (1933). At the time we stated this, we did not define the scope of what we meant by the term "public obligation," and we do not appear to have done so since then.[36] Despite this lack of a clear definition, we find the following reasoning highly instructive: "[W]aiver is not . . . allowed to operate so as to infringe [on] the rights of others, or to transgress public policy or morals.

"*The public interest may not be waived.* [When] a law seeks to protect the public as well as the individual, such protection to the state cannot, at will, be waived by any individual, an integral part thereof. The public good is entitled to protection and consideration and if, in order to effectuate that object, there must be enforced protection to the individual, such individual must submit to such enforced protection for the public good. . . . Accordingly, a statutory right conferred on a private party, but affecting the public interest, may not be waived or released if such waiver or release contravenes the statutory policy." (Citation omitted; emphasis added; internal quotation marks omitted.) *In re Application for Petition for Writ of Habeas Corpus by Dan Ross*, 272 Conn. 676, 719–20, 866 A.2d 554 (2005) (*Lavery* and *Dranginis*, *Js.*, dissenting); see also *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697, 704, 65 S. Ct. 895, 89 L. Ed. 2d 1296 (1945) ("[when] a private right is granted in the public interest to effectuate a legislative policy, waiver of a right so charged or colored with the public interest will not be allowed [when] it would thwart the legislative policy which it was designed to effectuate"). Indeed, further research reveals that we initially based this reasoning on the simple concept that "[o]ne cannot give what one does not possess. One may waive a personal obligation of another to the one waiving. One cannot waive an obligation owed by another to the public." *L'Heureux* v. *Hurley*, supra, 117 Conn. 355–56. Thus, when an obligation is "a public obligation created by statute," it cannot be waived by any individual or group of individuals.[37] Id., 356; see also *Beasley* v. *Texas & Pacific Railway Co.*, 191 U.S.

492, 498, 24 S. Ct. 164, 48 L. Ed. 274 (1903) (Holmes, J.) ("the very meaning of public policy is the interest of others than the parties and that interest is not to be at the mercy of the [parties] alone").

We believe that the training requirement in § 10-223e (h) embodies a public obligation that, through the act of the General Assembly, inures to the benefit of the citizens of Connecticut as a whole. We reach this conclusion in view of the fact that this provision is meant to ensure that, if it is necessary to reconstitute a local board of education, reconstitution will occur in a methodical, deliberate and transparent manner. In this sense, the provision creates a process that benefits no person or group individually. It benefits the citizens of this state by mandating a transparent process, it protects the local electors and the democratic process, and it furthers a policy of maintaining a locally elected board of education to the maximum extent possible, even when that board is subjected to increased state supervision and control. In that sense, the training provision serves, at the very least, the twin purposes of providing notice that the state board is considering authorizing reconstitution of a local board and of affording that local board another chance, following training, to demonstrate that it can operate effectively without the need to resort to the severe measure of reconstitution. At a minimum, the goal that the legislature envisioned through the training requirement consists of protecting the democratic process by providing locally elected boards of education with every possible opportunity to become more effective, without the need to resort to the extreme action of reconstitution. These considerations support our conclusion that the training provision is a public obligation and sufficiently distinguishable from the time limit provision that was at issue in *Stewart*, or, for that matter, the arbitration provision at issue in *Local 884, Council 4, AFSCME, AFL-CIO*.[38]

In sum, because the training provision serves the public interest of Connecticut as a whole, we are not persuaded that the local board, even as a democratically elected representative body of the electors of the city of Bridgeport, could act to waive the provision. Put differently, the legislature, as the representative body of the citizens of Connecticut, has determined that requiring local boards of education to undergo training before the state board can authorize their reconstitution is in the public interest. Because the legislature has determined that it is in the interest of the state as a whole to have a methodical, deliberate and transparent process for reconstitution, it simply cannot follow that the local board could waive, on behalf of the electors of the city of Bridgeport, this statewide public obligation.

In light of the defendants' failure to provide this court with any reasonable justification in support of their waiver argument, we follow our previous decisions and

decline to extend the doctrine of waiver to a mandatory statutory provision that exists for the benefit of the public rather than a specific individual. Accordingly, we conclude that the training requirement in § 10-223e (h) is both mandatory and not subject to waiver.[39]

III

The foregoing analysis dispenses with the bulk of the arguments proffered by the defendants in this reservation. We address only one additional argument in more detail, as we believe doing so will further emphasize why the training provision in § 10-223e (h) is not waivable. In essence, the defendants claim that this court should not construe the training requirement to be so important as to override a resolution of a local board seeking reconstitution by the state board. As we understand this claim, the defendants are arguing that, once a local board has reached its own determination that it is operating dysfunctionally, has attempted to undergo its own training, and has concluded that it would not benefit from the training envisioned by § 10-223e (h), imposing the training requirement on the local board would elevate form over substance.[40] We disagree with this claim.

We begin with the legislative intent and policy rationale behind the training requirement. For largely the same reasons that we discussed in connection with the defendants' waiver argument; see part II of this opinion; the statute's legislative history and significant policy considerations germane to Connecticut's education system compel the conclusion that the training requirement is not a mere procedural speed bump for the state board to overcome prior to authorizing the commissioner to reconstitute a local or regional board of education.

Additionally, the defendants' argument in this regard lacks merit for two other reasons. First, if we accepted the defendants' argument that the training requirement should be dismissed as being unimportant or futile, at least when a local board has undergone some sort of arguably relevant training, we would be concluding, essentially, that a public agency such as the state board and the public officials that compose it have no good faith obligation to fulfill statutory requirements that are directed at them. This is contrary to common sense and, more importantly, the oath of office that public officials must take. See General Statutes § 1-25 (delineating forms of oaths, which require individual to swear or affirm that he or she will "faithfully discharge, according to law, the duties of [his or her] office"); see also Bridgeport Municipal Code § 2.04.020 ("[e]very officer of the city shall, before he enters upon the duties of his office, make oath or affirmation before some competent authority for the faithful and impartial discharge of the duties of such office"); Bridgeport Charter c. 2, § 6 (b) ("[a]ll elected and appointed officials of

the city shall be sworn to the faithful discharge of their respective duties"). Moreover, with specific regard to the present case, there is no dispute that § 10-223e (h) refers to the mandate that the *state board* require a local board of education to undergo and complete training but not to the authority of a local board to seek out its own training. As we noted previously, § 10-223e (c) (2) sets forth the state board's obligation to improve all low achieving schools and districts by dictating that the state board work in conjunction with the local schools and boards of education. The defendants' position would allow the state board to sidestep its statutory obligation to work in cooperation with the local board before authorizing reconstitution. In other words, if we were to accept the defendants' argument, we essentially would be allowing the state board to forgo a statutory obligation that the legislature intended the state board to fulfill. In this regard, an application of the waiver doctrine to the present case premised on the notion that training is unimportant or futile is equivalent to wholly disregarding the will of the legislature. As we stated in part II of this opinion, the legislature has signaled in numerous instances that it expects the state board and local boards of education to work together in every manner possible to maintain local control and operations of the educational system.

Even if we were to accept the proposition that, at some point, requiring training would be futile,[41] in the present case, the state board and local board's determination to that effect was premature. Neither the state board nor the local board could have adequately assessed whether training would be futile because (1) neither board knew what type of specific training the local board would receive, as the state board never had required training of any local board of education prior to authorizing reconstitution, and (2) the local board members, having never been in the position of potentially having their board be reconstituted, were unable to know whether training would be helpful in that circumstance. Simply put, the defendants' futility argument does nothing more than beg this court to accept the premise that a public official need not attempt to carry out his or her responsibilities. Even more troublesome is that, taken to its logical end, the defendants' argument would allow the state board to reconstitute local boards of education without requiring any training at all. As we have stated elsewhere in this opinion, this clearly is not the result intended by the legislature, which sought to provide protections to the public by requiring the state board to fulfill certain statutory obligations prior to authorizing reconstitution.

Additionally, and on a more fundamental level, the claim that the training requirement is effectively not a requirement for the state board ignores the plain language of the statute and well accepted principles of statutory construction. If the legislature did not intend

for the state board to require local boards of education to undergo and complete training before the state board authorizes their reconstitution, it would have used different language or omitted that language from the statute altogether. The fact that the legislature inserted the training requirement *and* directed that requirement to the state board strongly suggests that (1) the legislature intended that the *state board* would determine when it would require the local board to undergo and complete training, and (2) only this specific type of training would give the state board the authority to authorize the reconstitution of the local board.[42] Moreover, neither the plain language of the statute nor the legislative history indicates that an exception to the training requirement exists if the state board were to conclude that such training would be unnecessary or futile, and we do not believe it is appropriate to read such an exception into the statute in light of the record presented by this case. Cf. *Forest Walk, LLC* v. *Water Pollution Control Authority*, 291 Conn. 271, 284, 968 A.2d 345 (2009) ("[i]n the absence of any indication of legislative intent, we cannot engraft additional requirements onto an otherwise silent provision").

On the basis of the legislative history, policy considerations and the well-founded principle that we presume that the legislature acts intentionally when it includes certain words or provisions within a statute; see, e.g., *Housatonic Railroad Co.* v. *Commissioner of Revenue Services*, 301 Conn. 268, 303, 21 A.3d 759 (2011) ("We presume that the legislature did not intend to enact meaningless provisions. . . . [S]tatutes must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant . . . ." [Internal quotation marks omitted.]); we reject the defendants' claim that the training requirement is illusory or that it can be satisfied by evidence of participation in training by the local board of education on its own initiative.

In emphasizing the different roles of the state board and local boards of education, we do not suggest that the state's role is limited, especially with regard to low achieving schools or districts, or that the state does not have the ultimate responsibility of providing appropriate educational opportunities. Indeed, as we previously noted, the state board's supervisory role includes many responsibilities that concern the day-to-day administration of low achieving schools and districts, and the state board possesses broad powers to carry out those responsibilities. As the foregoing analysis demonstrates, however, Connecticut has not entirely abandoned a policy of delegating the vast majority of educational administration to local boards of education, even with regard to local oversight of low achieving schools and districts. Section 10-223e (h) must be construed in light of that policy. At a minimum, there is no reasonable basis for concluding that the legislature

intended that § 10-223e (h) would upend the balance of operations and control between the state board and local boards of education in any circumstance other than the specific one envisioned by the statute. There is no suggestion that the legislature expects local boards of education to seek out reconstitution themselves. Instead, the legislature empowered the state board, and the state board only, with the power to authorize reconstitution, but that authority is circumscribed to the extent that the state board must first require the local board of education to undergo training. Neither the statute nor legislative history provides that local boards of education may make their own determination as to whether training or reconstitution is appropriate.

Thus, the fundamental distinction between the majority opinion and the dissent is not the concern for the educational needs of Bridgeport students. Rather, it is our answer to the question of whom the training provision is intended to protect. In light of the language of the statute and the relevant legislative history, we do not view the training provision as protective of any particular individual or group. The dissent, however, without any analysis or authority to support its position, claims that it protects the local board. Because we are unwilling to accept such an assumption when there is authority to the contrary, we reach an outcome different from that of the dissent.

For the foregoing reasons, we conclude that the state board's failure to require the local board to undergo and complete training, as required by § 10-223e (h), rendered void the state board's authorization to the commissioner to reconstitute the local board. Accordingly, we answer the first question presented in this reservation in the affirmative.[43] We decline to answer the remaining four questions because our answer to the first disposes of all other underlying issues.

The case is remanded to the trial court with direction to set a date for a special election for the local board. The special election will include all four seats that would have been filled on the basis of voting in the 2011 Bridgeport municipal elections. Because not all former local board members can be reinstated at this time, as some of their terms of office have expired, and because a local board must continue to function until a new local board can be elected, we stay the effect of our decision pending final certification of the special election results by the town clerk. Therefore, the trial court shall direct that the seven current members of the reconstituted board remain in office until the special election has been completed. At that time, the trial court shall reinstate the five members of the local board whose terms of office have not expired, to serve along with the four newly elected members.

The answer to the reserved question of whether the state board of education violated § 10-223e (h) when it

authorized the commissioner of education to reconstitute the board of education of the city of Bridgeport is: Yes. The case is remanded to the trial court with direction to proceed in accordance with this court's directive in the preceding paragraph.

No costs shall be taxed in this court to either party.

In this opinion ROGERS, C. J., and NORCOTT, McLACHLAN, EVELEIGH and HARPER, Js. concurred.

* February 28, 2012, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] General Statutes § 10-223e (h) provides: "The State Board of Education may authorize the Commissioner of Education to reconstitute a local or regional board of education pursuant to subdivision (2) of subsection (d) of this section for a period of not more than five years. The board shall not grant such authority to the commissioner unless the board has required the local or regional board of education to complete the training described in subparagraph (M) of subdivision (2) of subsection (c) of this section. Upon such authorization by the board, the commissioner shall terminate the existing local or regional board of education and appoint the members of a new local or regional board of education for the school district. Such appointed members may include members of the board of education that was terminated. The terms of the members of the new board of education shall be three years. The Department of Education shall offer training to the members of the new board of education. The new board of education shall annually report to the commissioner regarding the district's progress toward meeting the benchmarks established by the State Board of Education pursuant to subsection (c) of this section and making adequate yearly progress, as defined in the state accountability plan prepared in accordance with subsection (a) of this section. If the district fails to show adequate improvement, as determined by the State Board of Education, after three years, the commissioner may reappoint the members of the new board of education or appoint new members to such board of education for terms of two years."

[2] Specifically, the primary question reserved for this court's advice is: "Did the state board . . . violate . . . § 10-223e (h) in its decision to authorize the commissioner . . . to reconstitute the [local board]?"

Four other questions are presented in the reservation: (1) whether § 10-223e (h) violates article tenth, § 1, of the constitution of Connecticut; (2) whether § 10-223e (h) violates article sixth, § 4, of the constitution of Connecticut; (3) whether § 10-223e (h) violates article first, §§ 1, 4 and 20, of the constitution of Connecticut; and (4) whether the local board had the legal power or authority to adopt a resolution requesting its reconstitution by the state board.

Because we decide the issues presented by the reservation solely on a statutory basis, we do not reach the constitutional questions. See, e.g., *In re Shanaira C.*, 297 Conn. 737, 754, 1 A.3d 5 (2010) ("we must be mindful that [t]his court has a basic judicial duty to avoid deciding a constitutional issue if a nonconstitutional ground exists that will dispose of the case" [internal quotation marks omitted]). Moreover, we need only address the question of whether the local board had the authority to request that the state board authorize reconstitution to the extent that it is germane to our statutory analysis of § 10-223e (h).

[3] General Statutes § 10-223e (c) (1) provides in relevant part: "Any school or school district identified as in need of improvement pursuant to subsection (a) of this section and requiring corrective action pursuant to the requirements of the [federal] No Child Left Behind Act . . . shall be designated and listed as a low achieving school or school district and shall be subject to intensified supervision and direction by the State Board of Education."

General Statutes § 10-223e (a) provides in relevant part: "In conformance with the [federal] No Child Left Behind Act . . . the Commissioner of Education shall prepare a state-wide education accountability plan, consistent with federal law and regulation. Such plan shall identify the schools and districts in need of improvement, require the development and implementation of improvement plans and utilize rewards and consequences."

[4] Specifically with regard to training, the resolution stated: "WHEREAS, the [local board] has received training in the skills needed to function

effectively as a [b]oard of [e]ducation, but such training has not enabled the [local] [b]oard to carry out its statutory responsibilities, and the [local board] does not believe that further training would be productive or would enable [it] to carry out those responsibilities . . . ."

The resolution concluded by stating: "NOW THEREFORE BE IT RESOLVED that the [local board] hereby requests that the [s]tate [b]oard, acting pursuant to the . . . General Statutes, including, but not limited to, General Statutes § 10-223e (h), authorize the [c]ommissioner of [e]ducation of the [s]tate of Connecticut to reconstitute the [local board] in accordance with statutory authority, and that the [s]tate [b]oard take such other statutorily authorized actions as may enable the Bridgeport public schools to fulfill their statutory and constitutional responsibilities."

[5] Due to the posture of the case as it reaches us in this reservation, we have somewhat simplified the procedural history. In particular, we focus on the nature of the parties and their claims as they existed at the time the reservation came to this court. Additionally, for simplicity, we hereinafter refer to the three sets of plaintiffs collectively as the plaintiffs. Similarly, we refer to all defendants collectively as the defendants.

[6] The myriad claims of the various plaintiffs have been condensed and simplified for purposes of this reservation.

[7] Practice Book § 73-1 provides in relevant part: "(a) Any reservation shall be taken to the supreme court or to the appellate court from those cases in which an appeal could have been taken directly to the supreme court, or to the appellate court, respectively, had judgment been rendered. Reservations in cases where the proper court for the appeal cannot be determined prior to judgment shall be taken directly to the supreme court."

"(b) All questions presented for advice shall be specific and shall be phrased so as to require a Yes or No answer.

"(c) Before any question shall be reserved by any court, counsel shall file in that court a stipulation which shall clearly and fully state the question or questions upon which advice is desired; that their present determination by the appellate court having jurisdiction would be in the interest of simplicity, directness and economy in judicial action, the grounds for such allegation being particularly stated; that the answers to the questions will determine, or are reasonably certain to enter into the final determination of the case; and that the parties request that the questions be reserved for the advice of the appellate court having jurisdiction. The stipulation shall also designate the specific pleadings in the trial court case file which are necessary for the presentation of the question or questions sought to be reserved and shall state the undisputed facts which are essential for determination of the question or questions sought to be reserved. . . .

* * *

"(e) The court will not entertain a reservation for its advice upon questions of law arising in any action unless the question or questions presented are such as are, in the opinion of the court, reasonably certain to enter into the decision of the case, and it appears that their present determination would be in the interest of simplicity, directness and economy of judicial action. . . ."

[8] The defendants do not dispute that the plain language of § 10-223e (h) directs the state board to require the local board to participate in training before the state board can authorize reconstitution. Furthermore, the defendants do not argue in their briefs that the state board complied or substantially complied with this statutory mandate to require training. Indeed, during oral argument, counsel for the defendants conceded that, in the absence of waiver, the statute requires strict compliance. The defendants do advance an argument with regard to the apparent futility of requiring training in the present case. We address this argument in part III of this opinion.

[9] We pause to address the issue of whether the defendants' waiver argument is properly before this court, as such an argument is not found explicitly in the questions in this reservation. We believe the argument falls within the scope of the first question of the reservation, namely, whether the state board violated § 10-223e (h) when it authorized the commissioner to reconstitute the local board. If the statutory provision is not waivable, the state board violated the statute by failing to provide training. Conversely, if the provision is waivable, and waivable by a local board of education, the state board did not violate the statute, provided that the waiver actually occurred. We acknowledge the plaintiffs' argument, advanced in their reply brief and during oral argument, that the issue of waiver is not properly before this court because it is an issue of fact, not included in the stipulated facts in this reservation. Nevertheless, our determination of whether the provision is waivable, and by whom, is a matter of pure statutory interpreta-

tion. The only issue of fact is whether the local board's resolution serves as a proper and effective waiver. Because we conclude, as a matter of law, that the waiver doctrine is inapplicable to the present case, we need not reach the factual question of whether the local board effectively waived the training requirement.

[10] General Statutes § 10-223e (c) provides in relevant part: "(2) Notwithstanding any provision of this title or any regulation adopted pursuant to said statutes, except as provided in subdivision (3) of this subsection, in carrying out the provisions of subdivision (1) of this subsection, the State Board of Education shall take any of the following actions to improve student performance and remove the school or district from the list of schools or districts designated and listed as a low achieving school or district pursuant to said subdivision (1), and to address other needs of the school or district: (A) Require an operations audit to identify possible programmatic savings and an instructional audit to identify any deficits in curriculum and instruction or in the learning environment of the school or district; (B) require the local or regional board of education for such school or district to use state and federal funds for critical needs, as directed by the State Board of Education; (C) provide incentives to attract highly qualified teachers and principals; (D) direct the transfer and assignment of teachers and principals; (E) require additional training and technical assistance for parents and guardians of children attending the school or a school in the district and for teachers, principals, and central office staff members hired by the district; (F) require the local or regional board of education for the school or district to implement model curriculum, including, but not limited to, recommended textbooks, materials and supplies approved by the Department of Education; (G) identify schools for reconstitution, as may be phased in by the commissioner, as state or local charter schools, schools established pursuant to section 10-74g, innovation schools established pursuant to section 10-74h, or schools based on other models for school improvement, or for management by an entity other than the local or regional board of education for the district in which the school is located; (H) direct the local or regional board of education for the school or district to develop and implement a plan addressing deficits in achievement and in the learning environment as recommended in the instructional audit; (I) assign a technical assistance team to the school or district to guide school or district initiatives and report progress to the Commissioner of Education; (J) establish instructional and learning environment benchmarks for the school or district to meet as it progresses toward removal from the list of low achieving schools or districts; (K) provide funding to any proximate district to a district designated as a low achieving school district so that students in a low achieving district may attend public school in a neighboring district; (L) direct the establishment of learning academies within schools that require continuous monitoring of student performance by teacher groups; (M) require local and regional boards of education to (i) undergo training to improve their operational efficiency and effectiveness as leaders of their districts' improvement plans, and (ii) submit an annual action plan to the Commissioner of Education outlining how, when and in what manner their effectiveness shall be monitored; or (N) any combination of the actions described in this subdivision or similar, closely related actions. . . ."

[11] We note that the training provision in § 10-223e (c) (2) (M), when employed outside the context of reconstitution under § 10-223e (h), is not necessarily mandatory, as it is but one of many actions that the state board can take with respect to low achieving schools and districts. Nevertheless, the fact that the legislature chose to incorporate by reference that sole provision of § 10-223e (c) (2) (M) in § 10-223e (h) suggests, if not compels, the conclusion that training is a precondition to the state board's authority to authorize the reconstitution of a local or regional board of education.

[12] See footnote 8 of this opinion. We reiterate that the defendants do dispute whether this training is a mere formality, that is, whether satisfactory completion of the training would have any effect on the state board's ultimate decision to authorize reconstitution. We analyze this argument in more detail in part III of this opinion.

[13] We note that the defendants raised the argument of waiver for the first time in their brief before this court, and, for that reason, the plaintiffs were limited to responding to this argument in their reply brief and at oral argument. The plaintiffs' principal arguments focus instead on the fact that (1) the state board lacked statutory authority to authorize reconstitution because it failed to require the local board to undergo training, and (2) there was no substantial compliance with the training requirement by virtue of

the local board's partial participation in discretionary training, which the local board itself sought.

[14] The dissent attempts to paint a different picture through citations to various statistics and social science data demonstrating the poor performance of the local school district. We do not debate that the local school district has faced and continues to face difficulty in achieving a minimum level of satisfactory performance in recent years. Indeed, the parties have stipulated to that fact. Nevertheless, the dissent's reliance on this data—which, we note, the parties did not include in their stipulated facts—is otherwise irrelevant. The plaintiffs are not seeking a determination about whether the local board qualified for reconstitution under § 10-223e on the basis of the underperformance of the local school district. Instead, they have asked us to determine whether the state board followed the requirements of § 10-223e (h) when it authorized reconstitution. Thus, the statistics and social science data on which the dissent relies do nothing to contextualize the issue beyond the parties' stipulation. To the extent that the dissent relies on these data to suggest that the issue before this court is the broader policy issue of whether and when the state board should reconstitute local or regional boards of education, the dissent improperly expands the scope of this reservation. See, e.g., *Phelps Dodge Copper Products Co.* v. *Groppo*, 204 Conn. 122, 136 n.10, 527 A.2d 672 (1987) (this court will decline to address claim that is outside issue presented by reserved question).

Additionally, we note that the dissent relies on these statistics to "help explain why barring local boards from waiving the training provision would frustrate the purpose of § 10-223e." We disagree. As evidenced by the language of the statute and the legislative history on which both the majority and dissent rely, one of the purposes of the statute is to provide training and other assistance to local boards of education in order to improve the performance of local schools and school districts. Thus, contrary to the dissent's reasoning, barring local boards from waiving the training provision furthers, rather than frustrates, the statute's purpose.

[15] These remarks occurred prior to the vote on the proposed legislation in the House of Representatives. It appears that the Senate did not debate this aspect of the proposed legislation before the Senate voted on it.

[16] The following colloquy ensued between Representatives Candelora and Fleischmann:

"[Representative Candelora]: . . . [O]nce a school is deemed to be low achieving, as I read this, the mechanism would be that the commissioner would send that board of education to complete a training course. *If* that board of education completes that training course, as I read this, it seems that the commissioner *could* then sort of monitor, but would still have the ability to recommend reconstitution of that board of education. Am I correct in that?

* * *

"[Representative Fleischmann]: . . . I believe that power resides in the [s]tate [b]oard of [e]ducation, but I think the rest of the characterization was accurate." (Emphasis added.) 53 H.R. Proc., Pt. 15, 2010 Sess., p. 4675.

[17] McQuillan did not state, during this hearing, whether he or the state board considered the local board to be one of the "rare instances" in which reconstitution would be appropriate.

[18] The dissent criticizes our reliance on legislative history as selective and "flawed," in part because "[we rely] to a significant extent on the statements of legislators who actually voted against the [proposed legislation adding subsection (h) to § 10-223e]." As the foregoing analysis demonstrates, we give the most weight to the remarks of Representative Fleischmann, a cochairman of the education committee and the legislator who introduced the bill amending § 10-223e to add subsection (h). See footnotes 24 and 27 of this opinion. Doing so accords with our previous treatment of legislative history. See, e.g., *Manchester Sand & Gravel Co.* v. *South Windsor*, 203 Conn. 267, 275, 524 A.2d 621 (1987) ("[t]he statement of the legislator who reported the bill out of committee carries particular weight and deserves careful consideration"). So too does our reliance on other statements made during the floor debate in the House of Representatives. E.g., id., 276 ("[s]tatements made on the floor of the house, although not controlling, may be judicially noticed and are a strong indication of legislative intent"). Additionally, "[a]lthough the comments of opponents of a bill ordinarily are entitled to less weight than those of its proponents, there are instances in which we have found them to be relevant." *Cotto* v. *United Technologies Corp.*, 251 Conn. 1, 12 n.7, 738 A.2d 623 (1999); see, e.g., *Washington* v. *Meachum*, 238 Conn. 692, 713–14, 680 A.2d 262 (1996) (relying on statements

of Senators opposed to bill to discern legislative intent). This case is one of those instances. The legislative history of § 10-223e (h) on which we rely in this opinion demonstrates that both the legislators in support of and the legislators in opposition to the bill spoke about (1) the importance of preserving locally elected boards of education, and (2) the specific process of reconstitution envisioned by subsection (h), namely, that the state board would consider authorizing reconstitution only after it had required the local board of education to undergo training. Thus, while we agree with the dissent that legislative history can be manipulated, we dismiss the dissent's accusation that we have done so in the present case. The dissent's criticism in this regard, through its references to the dissent in *State* v. *Courchesne*, 262 Conn. 537, 597, 816 A.2d 562 (2003) (*Zarella*, *J.*, dissenting), which was authored by the author of this opinion, is unwarranted. We do not understand how our reliance on the statements of legislators who expressed identical concerns, regardless of being in favor of or opposed to enactment of § 10-223e (h), reasonably could be viewed as manipulating the legislative history. Indeed, our opinion canvasses the legislative debate and remarks concerning the nature of § 10-223e (h). We therefore reject the dissent's claim that we have selectively and incorrectly relied on legislative history.

[19] This legislative intent is further supported by the structure of § 10-223e (c) (2) and its relationship to § 10-223e (h), as we noted previously in this opinion.

[20] This notion is further supported by comparison to the state board's role in monitoring low achieving schools or school districts pursuant to § 10-223e (c). During the course of its monitoring, the state board is obligated to "provide notice to the local or regional board of education for each [low achieving] school or district of the school or district's progress toward meeting the benchmarks established by the State Board of Education pursuant to subsection (c) of [§ 10-223e]." General Statutes § 10-223e (d).

[21] For example, both the Connecticut Association of Boards of Education and the Middletown Federation of Teachers, American Federation of Teachers Local 1381, submitted written testimony regarding the 2010 proposed legislation amending § 10-223e, in which they expressed concern with the granting of reconstitution authority to the state board and the commissioner. See Conn. Joint Standing Committee Hearings, supra, pp. 1358–59, written testimony of Ann Lohrand, President of the Middletown Federation of Teachers, American Federation of Teachers Local 1381; id., p. 1320, written testimony of the Connecticut Association of Boards of Education.

[22] We are cognizant that Representative Giuliano ultimately voted against the proposed legislation in 2010. We rely on her remarks merely to show that the legislature was aware of the full implications of § 10-223e (h). Ultimately, the legislature passed the proposed legislation and provided the state board with a means to authorize the reconstitution of local boards of education, notwithstanding the concerns voiced by Representative Giuliano. That does not, however, negate the veracity of these concerns; reconstitution of a local board of education remains a significant usurpation of power. Indeed, the defendants appear not to argue to the contrary.

[23] We acknowledge the defendants' arguments that not every local board of education in this state is elected. We do not perceive this as contradicting the remarks of the legislators who were concerned with protecting those local boards of education whose members are democratically elected.

[24] We also agree with Justice Harper's reasoning with regard to the importance of local control over education. According to Justice Harper, local control over education fosters a beneficial and symbiotic relationship between the parents, students and local school administrators, a relationship that should not be lightly disregarded.

[25] The preference for local control of education also is manifest in the remarks that Representative Lawrence F. Cafero, Jr., made prior to voting on the legislation granting the state board the authority to reconstitute local boards of education: "[W]e take [great] pride . . . here in New England, and Connecticut in particular, about *local control*. Citizens electing their representatives on a state level and certainly on a local level; their mayors and first selectman, their legislative body *and most importantly, their board of education*.

"The referendum that people mostly have is at the polling booth. If they believe their [b]oard of [e]ducation is failing . . . [t]hey could vote them out . . . . That's democracy." (Emphasis added.) 53 H.R. Proc., Pt. 15, 2010 Sess., pp. 4631–32.

Like Representative Giuliano, Representative Cafero ultimately voted against the bill. Although that may weaken the force of Representative

Cafero's argument with regard to whether reconstitution itself is a proper power to grant the state board, it does not alter the fact that his view of Connecticut's educational administration coincides with the policy embodied in the statutory scheme. Indeed, although Representative Fleischmann clarified or corrected some of Representative Cafero's statements, he did not challenge Representative Cafero's emphasis on the importance of local control. See generally id., pp. 4633–35, remarks of Representative Fleischmann. It does not appear that any representatives disagreed with the overall preference for local control of education in Connecticut.

[26] Even this might not always be the case, as § 10-223e (h) allows the state board to appoint former members of a local board of education to the newly reconstituted board.

[27] The dissent argues otherwise, stating that the state board properly could "reconstitute a local board of education *in a manner that affords the locality no notice whatsoever*"; (emphasis added) footnote 26 of the dissenting opinion; notwithstanding the clear legislative intent that the state board should authorize reconstitution only if a procedure for doing so is in place. See Conn. Joint Standing Committee Hearings, supra, pp. 1049–50, remarks of Representative Fleischmann ("[W]hen we look at the question of reconstituting a board, it isn't simply throwing them all out . . . . [I]t would involve a process of having a procedure in place . . . ."). We also reject this argument because it frustrates one of the purposes of the training requirement that we have identified, namely, to provide notice. The dissent's reasoning in this regard would require us to read the training provision language as being unconnected from the reconstitution authority language in the statute, contrary to our principles of statutory interpretation. See, e.g., *Historic District Commission* v. *Hall*, 282 Conn. 672, 684, 923 A.2d 726 (2007) ("Legislative intent is not to be found in an isolated sentence; the whole statute must be considered. . . . In construing [an] act . . . this court makes every part operative and harmonious with every other part insofar as it possible . . . ." [Citation omitted; internal quotation marks omitted.]).

Moreover, subsection (h) is not "a statutory amendment that construes and clarifies a prior statute [and therefore] operates as the legislature's declaration of the meaning of the original act." *Darak* v. *Darak*, 210 Conn. 462, 471, 556 A.2d 145 (1989). Subsection (h) constitutes a recent grant of power to the state board that the legislature did not initially confer under the original framework of § 10-223e. Indeed, the dissent's recitation of the genesis of subsection (h) supports this conclusion. For that reason, the dissent's primary focus on the legislative history of § 10-223e prior to the enactment of subsection (h), rather than the legislative history surrounding subsection (h), is misplaced. Nor could it be reasonably argued that the failure to provide reconstitution authority was an initial oversight by the legislature, subsequently corrected with the addition of subsection (h). Indeed, the legislative history on which the dissent relies suggests that one of the principal reasons why the legislature amended § 10-223e by adding subsection (h)—as part of an omnibus education reform bill that concerned, inter alia, charter schools and local governance councils—was to secure federal funding. See Public Acts 2010, No. 10-111, §§ 11, 21; see also footnotes 9 through 11 of the dissenting opinion and accompanying text.

[28] We note that the defendants and the dissent also focus on the statutory and constitutional roles of the state to provide adequate educational opportunities. We wholly agree with their understanding of educational policy in this state. Indeed, as the dissent notes, the low achieving schools in Bridgeport are a matter of statewide concern. At its core, this case raises issues directly concerning the students in the Bridgeport public schools. We are fully cognizant of the dire situation in Bridgeport, and are sensitive to the importance of providing its students, and students throughout this state, with adequate educational opportunities.

Nevertheless, to the extent that the defendants and the dissent rely on either article eighth, § 1, of the Connecticut constitution or the plurality's reasoning in *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, 295 Conn. 240, 990 A.2d 206 (2010) (*Connecticut Coalition*), as informing whether a local board of education can waive the state board's obligation to provide training prior to the authorization of reconstitution under § 10-223e (h), that reliance is misplaced. Specifically, in *Connecticut Coalition*, the plurality concluded that "article eighth, § 1, entitles Connecticut public school students to an education suitable to give them the opportunity to be responsible citizens able to participate fully in democratic institutions, such as jury service and voting. A constitutionally adequate education also will leave Connecticut's students prepared to progress to

institutions of higher education, or to attain productive employment and otherwise contribute to the state's economy. To satisfy this standard, the state, *through the local school districts*, must provide students with an objectively 'meaningful opportunity' to receive the benefits of this constitutional right." (Emphasis added.) Id., 314–15. The plurality expressly clarified the limits of its reasoning: "We emphasize that our conclusion . . . is not intended to supplant local control over education . . . [or to] deprive parents [of] a true say in their children's education. We are cognizant of the risks and separation of powers concerns attendant to intensive judicial involvement in educational policy making . . . and emphasize that our role in explaining article eighth, § 1, is to articulate the broad parameters of that constitutional right . . . and to leave their implementation to the expertise of those who work in the political branches of state and local government, informed by the wishes of their constituents." (Citation omitted; internal quotation marks omitted.) Id., 317 n.59. Thus, we do not find support in either article eighth, § 1, of the Connecticut constitution or the reasoning of the plurality in *Connecticut Coalition* for the proposition that the state board has the constitutional authority to reconstitute a local board by any means other than those enumerated in § 10-223e (h). We therefore also disagree with the dissent's focus on the general statutory and constitutional educational obligations of the state board and local boards of education as being determinative of whether the training requirement in § 10-223e (h) can be waived. The legislature's decision to delineate a specific process that must be followed for reconstitution *is* its expression of how the state board can further the educational policy in this state.

[29] We note that the defendants do not provide any other legal authority for their waiver argument. Moreover, the legislative history is devoid of any mention of waiver with regard to the training requirement. At no time during the legislative debates was the issue of waiver raised, including by McQuillan. Nor was any suggestion made that the state board could forgo the training requirement if it received a waiver from a local board of education. Although we do not suggest that waiver is only applicable when there is precedent or legislative history on point; see footnote 33 of this opinion; in the present case, an utter lack of authority to the contrary and the clear legislative intent compel the conclusion that the legislature did not intend that this provision would be waivable. Cf. *Forest Walk, LLC* v. *Water Pollution Control Authority*, 291 Conn. 271, 284, 968 A.2d 345 (2009) ("[i]n the absence of any indication of legislative intent, we cannot engraft additional requirements onto an otherwise silent provision").

[30] We clarify that we are not addressing the state board's *jurisdiction* in the present case to authorize reconstitution but only whether the state board had the authority to do so. "[T]he issue of subject matter jurisdiction is distinct from the authority to act under a particular statute. Subject matter jurisdiction involves the authority of a court [or agency] to adjudicate the type of controversy presented by the action before it. . . . A court [or agency] does not truly lack subject matter jurisdiction if it has competence to entertain the action before it. . . . Although related, the court's [or agency's] authority to act pursuant to a statute is different from its subject matter jurisdiction. The power of the court [or agency] to hear and determine, which is implicit in jurisdiction, is not to be confused with the way in which that power must be exercised in order to comply with the terms of the statute." (Internal quotation marks omitted.) *Southern New England Telephone Co.* v. *Dept. of Public Utility Control*, 261 Conn. 1, 3 n.2, 803 A.2d 879 (2002); see also *Tele Tech of Connecticut Corp.* v. *Dept. of Public Utility Control*, 270 Conn. 778, 791–92, 855 A.2d 174 (2004) ("[T]he mere fact that the procedures employed by the department [of public utility control (department)] . . . do not satisfy the requirements of [General Statutes] § 4-182 [c] does not mean that the department lacks jurisdiction to revoke the license, as the department's power to revoke emanates from [General Statutes] § 16-247g [g]. Therefore, it cannot be said that the department acted without jurisdiction merely because it failed to comply with § 4-182 [c]; instead, any failure to comply with § 4-182 [c] suggests that the department, in exercising its proper jurisdiction, failed to abide by the dictates of the law."). In the present case, the plaintiffs do not appear to be challenging the state board's subject matter jurisdiction, and we do not construe their arguments as such. Instead, the plaintiffs challenge, as unlawful, the state board's decision to authorize the reconstitution of the local board.

[31] In that connection, the statute speaks solely to the nature of the power granted to the state board regarding reconstitution of certain local boards of education and is silent as to whether a local board can waive the training

requirement. This is so because the legislature, in delineating the scope of the grant of power to the state board, would not need to concern itself with the authority of local and regional boards of education.

[32] We note that the state board's obligation to require training would unlikely be considered an onerous one. Although, as we note in this opinion, there are no procedures or guidelines with respect to § 10-223e (h), whatever training is required under § 10-223e (c) (2) (M) is unlikely to be any significant impediment to reconstitution.

This does not, however, diminish the importance of the training requirement. We reject the dissent's mischaracterization of our reasoning here as stating that the requirement is only a "speed bump . . . ." Footnote 6 of the dissenting opinion.

[33] For example, "[a] criminal defendant has the capacity to waive many of his or her fundamental procedural rights. [A] defendant can waive the right to counsel . . . the right to remain silent . . . the right to be present during trial . . . and, by entering a guilty plea, the rights to trial by jury and to confrontation, and the right against self-incrimination." (Citations omitted; internal quotation marks omitted.) *New Haven* v. *Local 884, Council 4, AFSCME, AFL-CIO*, supra, 237 Conn. 385. Similarly, "[i]t is well established that [during trial] a party that fails to object timely to the introduction of evidence or fails to assert a privilege in connection with disclosed material is deemed to have waived such objection or privilege and may not subsequently resurrect it to protect that material from subsequent disclosure." *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, supra, 292 Conn. 58; see also *State* v. *Kitchens*, 299 Conn. 447, 476–82, 10 A.3d 942 (2011) (discussing how defendant can waive claim of error by failing to object to jury instructions). "The waiver doctrine [also] applies to arbitration because [w]e have made it clear that we will not permit parties to anticipate a favorable decision, reserving a right to impeach it or set it aside if it happens to be against them, for a cause which was well known to them before or during the trial." (Internal quotation marks omitted.) *C. R. Klewin Northeast, LLC* v. *Bridgeport*, supra, 282 Conn. 87. Additionally, we have held that "statutory time limits may be waived." *New Haven* v. *Local 884, Council 4, AFSCME, AFL-CIO*, supra, 385–86. We also have applied the waiver doctrine in other circumstances, none of which are applicable to the present case. We therefore do not address them, although we clarify that this list is not intended to be comprehensive or to limit future application of the waiver doctrine.

[34] We note that whether a right is waivable does not necessarily depend on the *importance* of that right, as even fundamental constitutional rights can be waived by the person possessing those rights. See, e.g., *New Haven* v. *Local 884, Council 4, AFSCME, AFL-CIO*, supra, 237 Conn. 385. But see *Singer* v. *United States*, 380 U.S. 24, 36, 85 S. Ct. 783, 13 L. Ed. 2d 630 (1965) (holding that, because of nature of adversary system, defendant can waive constitutional right to jury trial only with consent of prosecutor and trial judge). Rather, as we explain in this opinion, the determination on waivability concerns the *nature* of the right, that is, whether it inures to the benefit of the individual or whether it primarily serves the public interest.

[35] In *New Haven* v. *Local 884, Council 4, AFSCME, AFL-CIO*, supra, 237 Conn. 378, the issue was "whether a party may waive misconduct, as defined in [General Statutes] § 52-418 (a) (3), by an arbitration board." Id., 380. Although we concluded that a party may waive such misconduct, our conclusion was grounded in *both* "the general rule that rights may be waived *and* the strong public policy that favors arbitration . . . ." (Citation omitted; emphasis added.) Id., 386–87.

[36] In the context of *L'Heureux* v. *Hurley*, supra, 117 Conn. 347, we employed the term with regard to a landlord's statutory obligation to provide adequate lighting in the public areas of an apartment building. See id., 351; see also id., 356 (specifically referring to "obligation owed by another to the public"). Specifically, we addressed the defendant landlord's attempt to avoid liability for injuries that the plaintiff had sustained in a dark hallway on the ground that the plaintiff had knowledge of the lack of lighting and therefore had assumed the risk by using the hallway. See id., 355. We acknowledged that the defendant's assumption of risk argument was equivalent to an argument that the plaintiff had waived the defendant's obligation to provide hallway lighting. See id., 355–56. Nevertheless, we rejected the defendant's claim, concluding that the statutory obligation to provide lighting in public areas existed not for the benefit of any specific individual but for the public generally. See id. Accordingly, the plaintiff could not be deemed to have waived the defendant's obligation because the statute did not exist

to benefit the plaintiff himself.

[37] This concept finds long-standing support in numerous other jurisdictions. See, e.g., Cal. Civ. Code § 3513 (Deering 2005) ("Anyone may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement."); *Hillside* v. *Sternin*, 25 N.J. 317, 325–26, 136 A.2d 265 (1957) ("The fact that the waiver is attended by good faith on both sides and is not harmful in the particular situation is not sufficient to justify it. If erosion of the policy is to be avoided, even in such a state of affairs, the municipality cannot be permitted to breathe validity into an invalid bid by waiver."); *Isenhower* v. *Isenhower*, 666 P.2d 238, 241 (Okla. App. 1983) ("A statute founded on public interest and prescribing the manner in which the public interests must be performed is mandatory and cannot be waived. While we agree that a right may be waived whether conferred by law or contract, when a statute contains provisions that are founded [on] public policy, such provisions cannot be waived by a private party if such waiver thwarts the legislative policy which the statute was designed to effectuate. Courts must give effect to legislative acts and may not amend, repeal or circumvent them."); cf. *Campbell* v. *Campbell*, 87 Ohio App. 3d 48, 50, 621 N.E.2d 853 (1993) ("It is well established that neither the defense of laches nor principles of estoppel will apply against the state, its agencies or agents when exercising governmental functions. . . . The rationale behind this rule is one of public policy. The public should not suffer due to the inaction of public officials. . . . This reasoning applies with equal force to the defense of implied waiver. Waiver is a concept which applies to an individual who freely waives his own rights and privileges. . . . The public interest may not be waived." [Citations omitted.]).

[38] We also disagree with the dissent's reasoning that the jurisprudence governing waiver of individually held constitutional rights informs whether statutory provisions with no clear individual beneficiary are waivable. A criminal defendant's ability to knowingly and intelligently waive his sixth amendment rights at trial is beyond question. We nevertheless fail to see the relevance of this proposition to the issue in this reservation, that is, whether a statutory provision that creates a condition precedent to the state board's power to act can be waived by an inferior local board of education. In attempting to connect the two, the dissent elides a key distinction between the sixth amendment to the United States constitution and § 10-223e (h). The rights afforded under the sixth amendment clearly confer a benefit on an individual criminal defendant and therefore may be waived by that defendant. Section 10-223e (h) does not clearly confer a benefit on any individual. Indeed, the fact that it is so difficult to discern any specific individual or body that § 10-223e (h) is intended to benefit supports the conclusion that the training provision was not meant to confer a right or benefit on anyone. See footnote 39 of this opinion. Rather, as we concluded in part II of this opinion, the legislature intended the training provision to serve as part of a clear, deliberate process when the state board seeks to authorize reconstitution.

[39] The dissent takes issue with our waiver analysis on the ground that "mandatory statutory provisions 'typically' are subject to waiver." We are somewhat perplexed by this statement, as our opinion clearly upholds the general rule that rights are typically waivable by the individual who possesses them. The dissent apparently fails to discern that the operative word in this principle is "typically." As our analysis demonstrates, the training provision set forth § 10-223e (h) is best characterized not as a right or protection that inures to the local board's benefit but as a condition precedent to the grant of authority to the state board to reconstitute a local board of education. To the extent that the training provision could be construed as providing an additional protective benefit, that benefit is one that inures to the citizens of the state as a whole and not to any particular local board of education. It therefore cannot be waived by any individual person or group. Furthermore, the dissent appears to misunderstand our reliance on the myriad of cases cited in support of the public obligation doctrine. Like the dissent, we have identified no precedent that supports the proposition that a local board of education may waive an obligation imposed on a state board. We do, however, find it instructive that courts in this state and other jurisdictions have precluded application of the waiver doctrine in cases in which a statute does not exist for any individual's benefit. Thus, we adopt the principles espoused by these courts and determine that the public obligation doctrine militates against a conclusion that the waiver doctrine applies to the training provision in § 10-223e (h).

Additionally, we find the dissent's contrary analysis unpersuasive. The dissent provides no basis for its conclusion that waiver occurred in the present case other than by relying on the inherently ambiguous language of the local board's resolution. Despite the dissent's attempt to portray the language of that resolution as supporting only one conclusion, namely, that the local board intended to waive training, it is equally if not more clear that the language supports a conclusion that the local board believed that the statute had been substantially complied with because the local board already had received some training. Indeed, both the local board hearing held on July 5, 2011, and the state board hearing held on July 6, 2011, are notable for the absence of any discussion of waiver. Remarkably, during the state board hearing, only one state board member tangentially raised the issue of training with Bellinger, the president of the local board. In response, Bellinger stated that the local board had *not* received enough training and could benefit from *additional* training. We initially note that the dissent dismisses these statements and instead selectively focuses only on those statements made by local board members that support the dissent's conclusion. Thus, in contrast to the dissent's conclusion that the local board resolution plainly supports a finding of waiver, the discussion at the state board meeting militates against such a finding. At the very least, it injects ambiguity into the meaning of the local board resolution, ambiguity that the dissent ignores.

[40] We note that there is substantial overlap between this argument and the defendants' waiver argument. The difference we perceive between the two is that, in this argument, the defendants focus on the fact that, although § 10-223e (h) requires strict compliance, we should not raise statutory form over factual substance when it appears that no added benefit would have been achieved by requiring the local board to undergo the statutorily mandated training.

We also clarify that, in addressing this argument, we do not accept the defendants' claim that the training in which certain of the local board members participated in 2010 should be treated as the functional equivalent to the training required under § 10-223e (h). As appellate counsel for the defendants conceded during oral argument before this court, as of October, 2011, there were no regulations, policies or standards in place for the specific type of training that the state board would require a local board of education to complete under § 10-223e (h). Indeed, the local board appears to be the first local or regional board of education reconstituted under § 10-223e (h). Because the local board did not undergo training specifically ordered by the state board pursuant to § 10-223e (h), there also is no precedent for determining what type of training the state board would require under the statute, or for determining how the state board factors satisfactory completion of training into its ultimate decision to authorize reconstitution.

[41] With regard to one aspect of the futility argument, we note that the state board clearly has the statutory authority to mandate training under § 10-223e (c) (2), as well as the authority to take various other remedial actions. If, for some reason, members of a local board of education or the local board of education as a whole refused to attend or complete training, it would appear that the state board could enforce its mandate through administrative and judicial procedures. See *New Haven* v. *State Board of Education*, supra, 228 Conn. 704–705 ("[i]f the local board of education fails or is unable to implement the educational interests of the state by carrying out these mandates, the state board may conduct an investigation, hold an administrative hearing pursuant to the Uniform Administrative Procedure Act, order appropriate remedial steps, and, if necessary, enforce its order in the Superior Court"). Nevertheless, we do not foreclose the possibility that the state board may be able to rely on a futility argument under certain circumstances. In the present case, however, for the reasons noted in this opinion, the defendants reliance on a theory of futility is not supported by the record. See footnote 39 of this opinion.

[42] This conclusion is further bolstered by the legislative history and intent that the state board would reassess the need to reconstitute a local board following completion of training. See, e.g., 53 H.R. Proc., Pt. 14, 2010 Sess., p. 4582, remarks of Representative Fleischmann ("*if* after that training [required under § 10-223e (h)] that board *continues* to be an impediment to execution of reforms, *then and only then* would the commissioner consider reconstituting that board of [education]" [emphasis added]). In other words, the legislature viewed the required training as a specific and identifiable benchmark to be used in the state board's overall assessment of whether a local board of education should be reconstituted. At no point does it

appear that the legislature intended that local boards of education would undergo their own, self-motivated, training to supplant the requirement in § 10-223e (h).

[43] Because we only address the reserved question of whether the state board violated § 10-223e (h) under the stipulated facts of this case and the waiver argument advanced by the defendants, we agree with the dissent that our holding indicates "that the training provision could not be waived even upon a 9-0 vote of the local board and upon unanimous community and political agreement" only, however, insofar as it concerns waiver. Whether the unanimous vote of a local board of education seeking reconstitution could serve to obviate the training requirement—for example, as the equivalent of a board's resignation contingent on reconstitution and, therefore, not in violation of § 10-223e (h)—is a question not presented by this reservation. Accordingly, we do not address it.